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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Written statement submitted by World University Service on behalf of the Coalition against Impunity and its NGO members, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council Council resolution 1296 (XLIV).

[17 January 1991]

Written statement presented by World University Service on behalf of the Coalition against Impunity and its NGO members

1. World University Service is a founding member of the NGO Coalition against Impunity, a group concerned with the trend of granting pardons, applying amnesty laws or allowing de facto impunity to military violators of human rights. We have addressed on several occasions the Commission on Human Rights, its Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Working Group on Enforced or Involuntary Disappearances, and the United Nations Secretary-General, to solicit the United Nations bodies dealing with human rights issues to consider the phenomenon of impunity and to create guidelines for States and societies.

2. Unfortunately, only the Working Group has expressed its opinion on the matter. Last year, in its report to the forty-sixth session of the Commission on Human Rights, the Working Group stated:

> "Perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past 10 years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held accountable before a court of law."

3. Recently, the international community witnessed the anguished response of the Argentine people to the pardons given by President Carlos Menem of Argentina, first in 1989 to a large number of army officers and civilians who were prosecuted for gross violations of human rights, and then, on 30 December 1990, to former military leaders responsible for crimes against humanity. The trend of impunity continues, trampling upon justice and distorting reconciliation processes. The Commission on Human Rights must no longer ignore this phenomenon, but rather take measures to confront it.

4. Impunity means, literally, freedom from punishment. To act with impunity means to act with the knowledge that one is above the law. In Latin America, impunity has come to have a specific meaning in political and human rights terms. Impunity means there that acts of State terror and repression by military/security forces against their own people are shielded from judgement or accountability before national law. International lawyers argue that while the State, as the offended party, may forgive crimes against itself, it cannot unilaterally forgive crimes it committed as the offender against its own citizens. Another key principle in international law is the continuity of the State: a change in government does not change the binding nature of the State's international legal obligations. The amnesties passed to absolve Latin America's military and security forces violate one or both of these principles.

5. Examples of impunity in Latin America abound. Pinochet's national security State passed an amnesty law in 1978 which "forgot" all crimes committed by the military after 11 September 1973. Under the current civilian government, the Supreme Court recently upheld this amnesty. In 1979, a "reciprocal amnesty" was passed in Brazil. The result was to head off investigations of police and military human rights violations, which included extensive torture and abuse.

6. In 1986, after Uruguayan military officers were ordered to appear in court by civilian judges, the Congress shielded from prosecution all military and police personnel responsible for human rights violations. In 1987, under Duarte and in the context of tens of thousands of civilian murders, El Salvador passed a reciprocal amnesty which was widely recognized as primarily benefiting the military. By all accounts, human rights violations in El Salvador continued after 1987 on a very large scale, perpetrated by military and security forces, such as the assassination of six Jesuit priests and their workers in 1989.

7. In Argentina, President Alfonsín instituted the Punto Final law to cut off hundreds of new cases of human rights violations, and then the Due Obedience law after mutinies by a faction of the military. The Due Obedience law essentially exonerated hundreds of officers accused of human rights crimes. President Menem went even further by pardoning over 200 military officers in 1989, and in the words of the New York Times, with the pardon given on 30 December 1990, "has trashed his country's finest achievement of the last 60 years" [to restore the principle of equality under the law] (3 January 1991).

8. In Guatemala, the military issued Decree 8-86 (a self-amnesty) four days before civilian President Cerezo took office in 1986. Cerezo basically accepted this self-amnesty despite widespread outrage among Guatemalans. Today, at the end of Cerezo's term, the situation of human rights in Guatemala is far worse than it was when Decree 8-86 was passed. Military and security forces, defensive in 1986, have regained through impunity their might, perpetrating massacres, such as the ones in El Aguacate and Santiago Atitlan, carrying out extrajudicial executions by the thousands, and being responsible for hundreds of forced disappearances.

9. In Bolivia, Colombia and Peru, the civilian governments have failed to take decisive action on cases of human rights violations and systematic abuses, thus allowing de facto impunity for their powerful military forces.

10. In all these cases, impunity has been effected, whether through unilateral amnesties passed by the military to forgive itself, amnesty laws passed by civilian governments, de facto situations of impunity, pardons, or institutionalized "national security" constitutions and laws.

11. Proponents of amnesty and forgiveness put two main arguments forward. First, impunity is a necessary price for the transition to civilian rule. The military régimes would refuse to step down without guarantees of immunity from prosecution. Second, in fragile new civilian régimes, attempts to try military officers have a destructive and destabilizing effect. The military is likely to rebel, overthrow the civilian régime, and return the country to the dark days of repression. According to this argument, absolution is a means of pacifying the political situation and defusing social conflict, thus trading revenge and retribution for peace and democracy.

12. We, critics of impunity, on the other hand, charge that it allows no legal or moral recourse for societies that have suffered rule by terror under national security régimes. Societies are robbed of the means to condemn and reject systematic military atrocities against society itself; political expediency triumphs over requirements of justice. Crimes against humanity (extrajudicial execution, disappearances and torture) and war crimes condemned under international law (massacres, murdering captured prisoners, and bombings of civilian populations) are absolved by governmental élites (not the victims) in the name of reconciliation and democracy. A culture of fear persists, as many officers and individuals known to have committed crimes remain free, and

often in high-ranking positions. The fear remains that terror might recur. There is no price for abhorrent crimes; there is no deterrence to protect human rights and liberties in the future. The moral fabric of society is corroded.

13. We believe that impunity has concrete effects upon military consciousness as well. Military and security forces, secure in the knowledge that impunity exists, often continue to act against any perceived opposition in violent and lawless ways, especially in situations of economic crisis or political challenge. The military interprets impunity as tacit approval of its methods, justified by reasons of "national security", "the war against subversion", etc. Thus the military/security forces remain a State within the State, beyond the reaches of law and civilian control. A culture of repression persists.

14. On the national level, there is evidence that impunity does not promote reconciliation or democratization, but rather undermines the rule of law and constitutional structures, weakens civilian authority, and perpetuates social divisions. Impunity may have the opposite effect than desired by strengthening the military and encouraging increased perceptions of immunity, contempt for civilian rule, and self-righteousness. Basic principles of democracy, such as military subordination to civilians, due process, and equality under the law, are violated. Impunity allows the military institution to remain autonomous and above the law, a dominant political actor in society. International agreements and treaties such as the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are ignored.

15. A final word on impunity. The pragmatic argument for impunity is based upon a notion of ends and means: the end of stable democracy depends on the means of impunity. Yet the means utilized to construct any system deeply shape its end. A society that silences cries for justice, and allows torturers and assassins to operate freely, is a society that faces a dubious future. A society that has been deeply scarred must come to terms with its past and settle accounts with its tormentors. The military régimes in Latin America ravaged societies as surely as did the Nazis. Societies aspiring to democracy and justice cannot be built upon a foundation of amorality, unpunished crimes, and official amnesia.

16. We urgently request the Commission on Human Rights to initiate a debate on the issue of impunity, with a view to its banning. We would very much like to see a resolution approved at this forty-seventh session and we are willing to contribute to its formulation. In any case, we call upon the Commission on Human Rights to take a decision at this session instructing the Sub-Commission on Prevention of Discrimination and Protection of Minorities to study the issue in depth and present proposals for the consideration of the Commission at its forty-eighth session.

Notes

(a) Members of the Steering Committee of the Coalition against Impunity are:

World University Service-U.S.
Service for Peace and Justice/SERPAJ
Federation of the Relatives of the Disappeared/FEDEFAM
International Association Against Torture
International League for the Rights and Liberation of Peoples, North American Chapter

Other members:

Guatemala Human Rights Commission, Mexico
Asamblea Permanente por los Derechos Humanos, Argentina
Centro de Documentacion e Informacion/CEDOIN, Bolivia
Centro de Estudios Legales y Sociales/CELS, Argentina
Co-ordination of Human Rights in Latin America, Australia
Grupo de Apoyo Mutuo/GAM, Guatemala
Centro de Investigaciones y Educacion Popular/CINEP, Colombia
Abuelas de Plaza de Mayo, Argentina

(b) This statement has drawn upon an article entitled "From National Security States to Militarized Civilian Governments: Confronting the Legacy of Repression" by J. Patrice McSherry.